

COMMISSIONERS APPROVAL

ROKOSCH

QJA

GRANDSTAFF

CG

THOMPSON

AT

CHILCOTT

Y

DRISCOLL

CO

Date.....July 10, 2007

Members Present.....Commissioner Jim Rokosch,
Commissioner Carlotta Grandstaff, Commissioner Alan Thompson, Commissioner Greg
Chilcott and Commissioner Kathleen Driscoll

Minutes: Glenda Wiles

The Board met with Mr. and Mrs. Arnott and other residents in their neighborhood in regard to their complaint against Terry Nelson for a potential subdivision evasion (on Stevi-Airport Road). Mrs. Arnott also presented signatures from neighbors who also have this complaint against Terry Nelson. Present were Planning Director Karen Hughes, Planner Tristan Riddell and Terry Nelson. Numerous citizens were in the audience.

Karen gave an update stating this is a long standing complaint. It came to her attention in 2004. Terry Nelson did a family transfer on this property that he owns. Neighbors Mr. and Mrs. Potten were the first to complain in 2004, the first lot transfer was done in February 2005. The Potten's continued to make complaints along with emails and conversations with and between Civil Counsel and the neighbors. In July 2005 Terry Nelson provided a response and in October 2005, Civil Counsel sent a memo and since then more memos and emails and complaints have come forward. The last conversation she had with the Commissioners and Civil Counsel was they were to handle this matter. The last action by the Commissioners was two letters to Terry asking for a response.

Mrs. Arnott stated she drives by this subdivision every day. It has been 2 ½ years since they asked the Commissioners to do something. She relayed Terry purchased the property, and then did a family transfer. He has sold five lots with two more for sale. None of his family members live there. There is an increase of cars due to this subdivision and the road is in the worse shape it has ever been. Terry has not done any work on the road and this is not a family transfer of lots as he says it is.

George Guest also lives on Airport Road. He relayed he knows this family transfer has been abused before and it is something that someone will always do (breaking the law). He felt this was a planned idea of Terry's in order to get around the law. He asked what

we do with it now. The Commissioners have been notified, and nothing has been done. He advised the Commissioners if they did not do anything he will apply for a family transfer on his remaining 4 acres and sell them off. He stated he is being penalized for following the law and now he has to put up with a road that is horrible to drive on. He had no input into this illegally created subdivision.

Mr. Arnott asked how Terry obtained permits for wells.

Mike Burnell also lives on Airport Road. He split a lot off of his property when he lived in Corvallis, and it cost him \$8,000 taking over a year to do. So why hasn't Terry been required to pay his fair share?

Davis Slauson lives on the old Lincoln Green Homestead at the end of Airport Road. He drives by the subdivision every day. Due to the construction activity, that stretch of the road is the worst part of the road. If there are rules and regulations; it would be nice to see those enforced. He felt there should at least be some road improvement on this road due to the development. The water table is fragile and every time we stick a straw in the glass there is an impact. Seven more septic tanks also have an impact and the neighbors had no opportunity to have input or have the rules enforced. This illegal development profits only the developer and he should know better.

Josh Hennis lives on Carissa Lane and his complaint is the water. Four years ago he had 10 gallons a minute and today it is a lot less. It is not just the 7 new lots with new residents that he has a problem with, but he also has a problem with the condition of the road due to the construction equipment. This is the type of thing that shook up the November election, adding two more Commissioners from different parties – as the Commissioners have known about this issue and have nothing done with it. The Commissioners have no accountability.

Terry Nelson stated he presented an application and approval letter and subsequent approval letters as they have appeared from the county. Terry stated he sold his house, purchased this property with the intent to move there. He ended up purchasing another piece of property with the intent to hang on to this property. He did a family transfer (to his kids and wife) but there were some people at his church who needed a lot so they bought that lot. He stated he was helping them out. After that sale he got 'lambasted' with complaints; his wife got migraine headaches. So he went ahead and sold the rest of these lots in order to feel better and get his life back in order. He obtained the family transfer three years ago, and he feels he followed the rules. He did not have any intent to evade the rules and he did not anticipate this kind of a meeting. As a surveyor he has dealt with exemption applications and he sees how the rules work and how they change. He stated he did not do anything wrong. Since he got his approval the rules changed, i.e., George Corn's memo to the Clerk & Recorder in 2006 which stated lots could not be sold within 4-5 years of the time of family transfer. His understanding is the county has to have evasion criteria but it must be done in their regulations.

In another letter from the Planning Office, they addressed at least a 3-year wait for the transfer of these lots. That was 2 ½ years after his approval. Now the rules have the subdivision evasion criteria within them. Terry stated he has not done anything to evade the intent of the law. He sat in on other meetings with Civil Counsel and felt the county could do nothing with what he has done. DEQ gave full approval for wells and septic. He stated he did spend \$6,000 to the road to be ripped up and re-graded.

Karen stated the 4-5 year language for policy was done in October 2005. This policy was the red flag for evasion. Senate Bill 116 triggered the subdivision regulations on November 20, 2006 where the evasion criteria were specifically set out.

Commissioner Rokosch asked about the July 9th, 2004, letter from the county granting the transfers. Karen stated Terry transferred the parcels to his wife, father, three sons and a daughter in the application. Terry stated none of those family members ever lived on those parcels. The first lot went to his friends in March of 2005. He sold the remainder lots within the last year and beginning of this year.

Commissioner Grandstaff questioned how much land was involved in this. Terry replied 14 acres into 7 lots. He has sold all parcels.

Mrs. Arnott stated one of the people who live there said he sold five lots and he has two more for sale. Terry stated he sold them all.

Alex stated there is a record of all of this downstairs. Tristan went to retrieve that information.

Commissioner Driscoll advised Terry he 'really knew what he was doing'. She stated what he has done 'amazes her, as he had the knowledge to know exactly what he was doing'. Terry responded he was 'just doing what was practiced at the time'. Commissioner Grandstaff advised Terry 'he knew what he was doing, and making those excuses does not make it right'.

Commissioner Chilcott stated Terry's family transfer came into focus when there was no provision and the state was so vague the evasion issue was un-enforceable. After Terry's application, the Commissioners recognized it was a problem. In September 2005 the memo from George Corn came down and in 2006 the Commissioners did the re-write of the regulations. Commissioner Chilcott stated corrective action was taken with the regulations in 2006, as that is when they established the evasion criteria.

Alex stated the memo was an attempt to provide a safe number of years between the application and the sale of any lots (4-5 years). Almost no other counties have done a time limit on these evasions. This is a state law problem and there is only so much the Commissioners can do.

Karen stated this has been a loop hole people utilize.

Commissioner Thompson stated they tried to correct this during the 2005 legislation but it did not pass. He agrees this is a problem particularly with the fast growth counties. He stated while he does not like it, they have to follow the law.

Commissioner Driscoll stated since 1996, 902 family transfers have taken place in Ravalli County. She asked how many of these were this type of evasion. She stated the tax payers are the ones who pay for this not only in not having a say about what goes on in their neighborhood, but they end up paying for the development.

Michele Golden asked if the property was the children's property, who got the profit when Terry sold the lots. Terry stated he received the money and he put the money in college funds.

Mrs. Arnott stated a subdivision was applied for in 1998 on this same property, and it was denied. Now the neighborhood has a subdivision whether they like it or not. In 2 ½ years he has sold five of these lots; and he sold them when he knew there was a complaint to the county. She stated this is a clear evasion of the subdivision exemption. The previous Civil Counsel James McCubbin emailed his opinion on July 15, 2005, stating this shows an evasion as intent to sell, although already completed. She advised the Commissioners they should pursue civil litigation and do not allow any further subdivisions by this family. She stated he knew exactly what he was doing and he knows you are not going to do anything about it.

Karen stated James was responding to a series of questions, that memo is addressed in #3 of her packet today.

Question from the audience: He noted the lots split was for his father, wife and children. Was there to be a separate house for your wife and children? The audience member stated the intent of Terry's heart shows what he is all about.

Jennie Hennis stated Terry is not denying his intent; he is just saying he took advantage of what he could get away with. Family transfer implies the intent and there must have been a precedent. She stated this is not fair. There is a right way to do a subdivision to sell for profit, and Terry chose the illegal way.

Michele (unknown last name) asked the Commissioners when a developer wanted to develop the Aspen Springs in Florence, how many public meetings were there? She stated there were numerous meetings, all for the sole purpose of garnering information and seeking public comment. In this subdivision there were no public meetings, thus no public comment.

Commissioner Grandstaff stated these neighbors ended up getting a subdivision in their neighborhood and they had no chance to comment on.

Josh said there was no intention for any of his family members to reside on this property. How many times do people get to do this in this county?

Karen stated they do property research following the chain of title.

Josh stated in Cascade County the minimum lot size is 20 acres.

Commissioner Driscoll asked how they make Terry accountable for under the law. Alex asked if she means in the past or the future. Alex replied 'pretty much nothing, all seven properties have been sold and we can not interfere with the new property owners'. Commissioner Grandstaff asked what the remedy is now for these neighbors.

Alex stated under the regulations now, the proposal goes through the committee meeting (like the Clerk & Recorder had yesterday) so the new deed won't be transferred. He noted there is a statute of limitation that has run out on prosecution of this issue. The only deed that has been transferred within the past year is the remainder parcel and the state has tied their hands on this one.

Commissioner Grandstaff asked again how the Commissioners make this right with the neighborhood. She suggested one issue would be to make Terry fix the road as the condition of the road is a direct result of the built out houses. Commissioner Grandstaff asked if the Commissioners could actually review the six criteria.

Jennie Hennis noted there was a complaint made by the Pottens in 2004. The bottom line is the Commissioners have drug their feet long enough, so now Terry will not be required to do anything.

Mr. Arnott stated he tried to get the Commissioners to do something when Terry sold the first lot. The people who bought this first lot are now building on another lot. But the Commissioners never did anything. Now you tell us there is a statute of limitations. That is the result of the lack of action by the Commissioners, not the neighbors. Mrs. Arnott also noted their complaint is not directed towards the three new sitting Commissioners but to Commissioner Alan Thompson and Commissioner Greg Chilcott. She further commented the Pottens wrote a letter and they too have written letters before the first lot was sold. She stated they have to get something for what has gone on with these lots.

Mrs. Arnott asked Commissioner Chilcott and Commissioner Thompson to respond. Commissioner Chilcott stated when they held the first meeting about this issue they had a lot of conversation with Civil Counsel on what to do. The Commissioners had no criteria until the 2006 regulations were put into place. Commissioner Chilcott asked Terry if he would be willing to mitigate the road issue.

Commissioner Grandstaff stated this county did prosecute a realtor some years ago, and there wasn't any evasion criteria then either. Commissioner Thompson stated that realtor did a family transfer for three parcels to her sons, and the sons then transferred the properties back to her, in order for the properties to be put on the market. The Board went before a District Court Judge and filed a law suit. The net result was she received

the property back and it was not sold. Commissioner Thompson stated he would like to see some road work done on this road also.

Terry stated he would be willing to pay \$5,000 toward some road construction or grading.

Commissioner Driscoll advised Terry he knows what he did, and he made a profit on this subdivision. He advised him he should be more humble.

Commissioner Grandstaff stated Terry created this subdivision and \$5,000 will not fix this road.

Marie (Mrs. Arnott) stated the tax payer dollars should not pay for this road; this is Terry's responsibility not the County Road Department. He should be penalized for the lots he sold.

Commissioner Grandstaff asked Alex how this could be rectified when the residents have been complaining and complying with the statutes, but nothing had been done by the Commissioners. Alex stated Montana Statutes limits this to one year. Commissioner Grandstaff asked if there was any civil recourse. Alex stated he would have to research this, but felt they might be 'out there on the edge on that one'.

Commissioner Grandstaff stated she would rather have the Road Department work on the road and have Terry pay them directly.

Josh asked if there was a particular standard of the road and if the county could assume maintenance. There are over 50 houses on this road with no county road maintenance. Alex stated there are portions of this road that are county road and portions that are not.

Josh stated after Terry is held accountable to fix the road, it should then be maintained. Commissioner Chilcott asked if this was under the regulations; would it be pro rata share for payment. Karen replied the portion that was maintained would have been pro rata and the portion that was not county maintained would have been reconstructed to county standards.

Commissioner Driscoll advised Terry his wife would not have headaches if he took care of this issue properly. Terry stated he still believes he did nothing wrong and he followed the practices allowed by the county. The deeds were filed. He stated he has trouble having retro active rules. He asked how he could foresee three years in the future, that this Board would review his family transfer. He reiterated he followed 'all advised and practices by the county'.

Commissioner Rokosch stated it would be his recommendation that the Board have Civil Counsel investigate what remedies the neighbors or county may have, however limited.

Commissioner Driscoll stated these residents need to be included in this process as they have been left out for these past three years. Commissioner Grandstaff stated they should

require the road be brought up to proper standards and investigate possible civil charges, for monetary compensation for roads, schools and fire.

Commissioner Driscoll advised Terry he should not be laughing. Commissioner Grandstaff also advised Terry he of all people should know that.

Commissioner Rokosch stated 'this smells and looks like a subdivision', therefore the Commissioners should look to the regulations that were in place at the time of this lot split for mitigation purposes. Alex asked how much road work or money is the Commissioner talking about. Commissioner Driscoll asked if the road department has looked at this road in order to ascertain the actual costs. Alex stated any recovery of road funds must go to the grader district. Commissioner Grandstaff noted the Commissioners can direct the road department to spend this amount.

Terry stated this was never discussed three years ago, so how would the Commissioners find out how the rules were applied. He advised the Commissioners they were coming after him a month or so after the election. He reiterated he followed past practices and he stayed within legal bounds. Commissioner Driscoll stated Terry had received letters and never responded to them.

Commissioner Chilcott stated the situation is clear, however unfortunate. He stated what they have here is someone who has taken advantage of the loop hole who understood the practices. He noted Terry was aware of the elasticity of the regulations and it did make a profound impact on this body. The exemption process has been utilized statewide as an evasion process and no one can abuse it better than someone who works in that profession. He stated he does feel it was a subdivision but the litmus test was whether it met the law. The previous counsel (James McCubbin) stated he was 'never confident it was a winner to go after this evasion by Terry'. He felt it was marginal to spend the money and go after him, and the previous Board chose not to do anything.

Mrs. Arnott stated she wants to know what decision is going to be made. Even in the regulations there is a time line. She stated they are a priority because they live there. She stated the neighbors want to be in the loop on this decision as they have been victimized by what Terry has been getting away with. She asked 'what the Board does for the citizens if they do not go to bat for us'?

Commissioner Rokosch stated they will have legal counsel make a determination if the county has a case. Alex stated this might take some time.

Stephanie Recke lives in the subdivision. She asked what will happen with the road within the subdivision as it is one car wide. Karen stated had it been a subdivision, the internal road would have been done correctly.

Commissioner Grandstaff stated he agrees this is an evasion of family transfer; and thus how do they mitigate the external and internal road issue. She agreed the neighbors should not wait too much longer.

Commissioner Driscoll suggested they allow Alex two to three weeks to do the research then meet again for a decision. Commissioner Grandstaff agreed.

Jennie stated she feels like she is an inconvenience to the Civil Counsel. While she realizes he is a busy person, this is an important issue to them. If we continue to put this off, the last lot sold will be out of the statute of limitations in the next six weeks. Alex stated he does not mean he is being inconvenienced by doing this research but he has a list of pending issues ahead of this one. He noted the original family transfer was filed in March of 2005, and the statutes of limitations are in year blocks.

Commissioner Driscoll stated this issue needs to be handled. She further stated there were no 'decision makers' in the county in the past, and while she recognizes the Commissioners must follow the law, a remedy must be sought for these neighbors. The Commissioners are elected to make decisions.

Commissioner Grandstaff suggested they give the neighbors a time line of when they will have this research done and meet again for a decision. Alex stated he would need 30 days and if he finds something quicker he will respond.

Mr. Arnott stated he appreciates Commissioner Driscoll and Commissioner Grandstaff understanding why this issue needs to be handled.

Josh asked what the Commissioners thought would happen in regard to the road repairs. Commissioner Rokosch replied they can not decide this issue today. We are directing Alex today to obtain information from the law in order to mitigate the road.

Commissioner Chilcott stated the county has 1,100 miles of road, 650 miles of which are unpaved. The road department has a priority list and we have never added a road to the maintenance list due to the lack of county resources. He indicated it would not be wise for the Commissioners to tell him they would take on any new road maintenance.

Commissioner Grandstaff made a motion to direct Alex to pursue (investigate) the civil remedies to this issue by looking at the impacts this subdivision has created to the neighborhood. Commissioner Driscoll seconded the motion. Discussion of the motion then took place. Commissioner Chilcott stated he is empathetic with the neighbors concerns, but asked if the county could prove this case if it ended in litigation. He agreed the citizens should have had the right to public comment. He stated he does believe this was an evasion, but Terry stated he never had the intent. And intent is one thing the county must prove. Commissioner Thompson stated he has no problem asking Civil Counsel to research this issue, so the Commissioners will know what options are open to them. Commissioner Grandstaff stated she has no problem directing counsel and telling him what the Commissioners want done. All voted "aye".

Minutes: Beth Farwell

The Board met for a request for commission action on Mountain View Orchards Block 8, Tract 22-A, AP minor subdivision (Carter). Planning Staff Jennifer DeGroot, Planners Renee Van Hoven and Randy Fifrick were also present as were citizens George Marshall, Jim Dundas, and Delbert Carter.

Jennifer presented the staff report as follows:

**MOUNTAIN VIEW ORCHARDS BLOCK 8, TRACT 22-A, AP (CARTER)
TWO-LOT FIRST MINOR SUBDIVISION AND ONE VARIANCE REQUEST**

STAFF REPORT FOR BOARD OF COUNTY COMMISSIONERS

CASE PLANNER: Jennifer De Groot

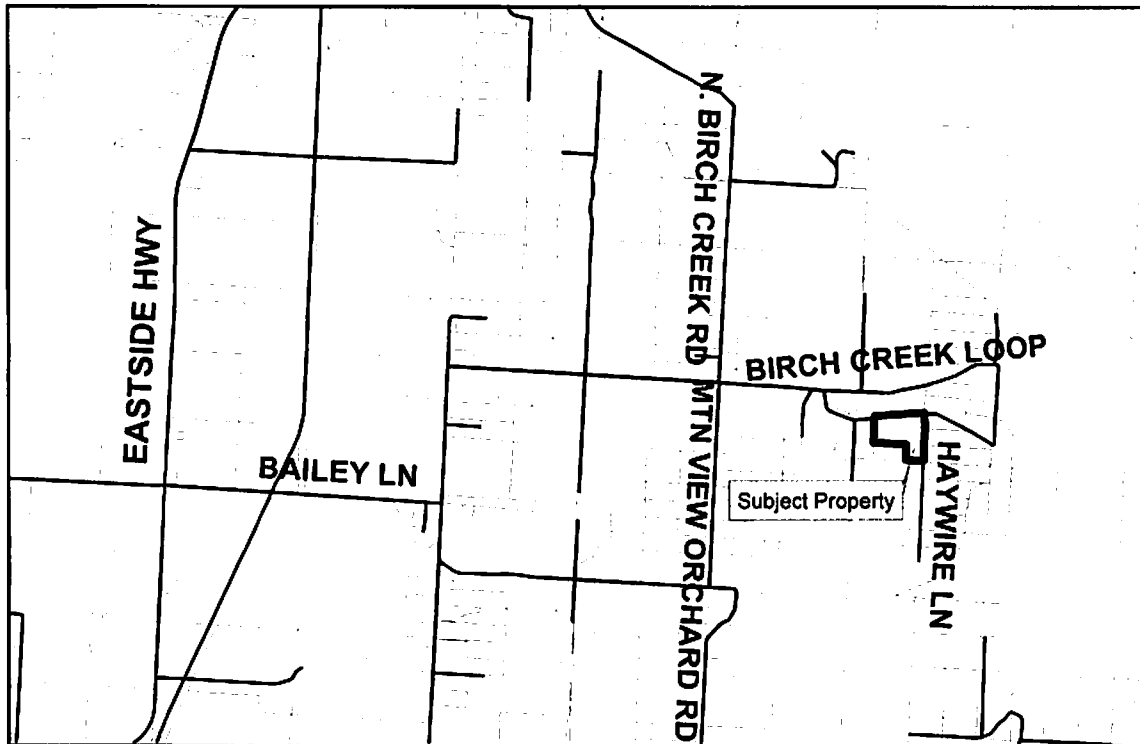
REVIEWED/
APPROVED BY: Renee Van Hoven

PUBLIC HEARINGS/
MEETINGS: BCC Public Meeting: 10:00 a.m. July 10, 2007
Deadline for BCC action (35-working days): August 6, 2007

SUBDIVIDER/OWNER: Delbert Carter
1995 Haywire Lane
Corvallis, MT 59828

REPRESENTATIVE: Alcyon, LLC
George Marshall
P.O. Box 218
Hamilton, MT 59840

LOCATION OF REQUEST: The property is located northeast of Corvallis off Haywire Lane. (See Map 1)



Map 1: Location Map
(Source Data: Ravalli County GIS Department)

**LEGAL DESCRIPTION
OF PROPERTY:**

Tract 22-A of AP# 535324 located in the SW $\frac{1}{4}$ of Section 12, T7N, R20W, P.M.M., Ravalli County, Montana.

**APPLICATION
INFORMATION:**

The subdivision application was determined complete on June 15, 2007. Agencies were notified of the subdivision and comments received by the Planning Department not included in the application packet are Exhibits A-1 through A-9 of the staff report. This subdivision is being reviewed under the subdivision regulations amended May 24, 2007.

LEGAL NOTIFICATION:

Notice of the project was posted on the property and adjacent property owners were notified by regular mail postmarked June 22, 2007. No public comments have been received to date.

DEVELOPMENT

PATTERN:	Subject property	Large Lot Residential
	North	Large Lot Residential
	South	Large Lot Residential
	East	Large Lot Residential
	West	Large Lot Residential

INTRODUCTION

The Mountain View Orchards, Block 8, Tract 22-A, AP Minor subdivision is a two-lot subdivision of 15.66 acres located northeast of Corvallis. There is an existing home on Tract 22-A1. Birch Creek, a perennial stream, flows through proposed Tract 22-A1. The subdivider is proposing a no-build/alteration zone extending 50-feet from each side of the ordinary high water mark of the creek. Concurrent with the subdivision proposal, the subdivider is requesting one variance from Section 5-4-5 (a) of the Ravalli County Subdivision Regulations, which would require the subdivider to construct the privately-maintained Haywire Lane to County standards, which would include paving.

Staff recommends conditional approval of the variance request and subdivision proposal.

RAVALLI COUNTY BOARD OF COUNTY COMMISSIONERS JULY 10, 2007

MOUNTAIN VIEW ORCHARDS BLOCK 8, TRACT 22-A, AP TWO-LOT MAJOR SUBDIVISION AND ONE VARIANCE REQUEST

RECOMMENDED MOTIONS

1. That the variance request from Section 5-4-5 (a) of the Ravalli County Subdivision Regulations to allow the subdivider relief from upgrading Haywire Lane to County standards be approved, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.
2. That the Mountain View Orchards Block 8, Tract 22-A, AP Major Subdivision be approved, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.

RECOMMENDED MITIGATING CONDITIONS OF APPROVAL FOR THE SUBDIVISION

1. A document entitled "Notifications to Future Property Owners" that includes the following notifications and the attachments listed below shall be included in the submittal of the final plat to the Planning Department and filed with the final plat:

Notification of Proximity to Agricultural Operations. This subdivision is located near existing agricultural activities. Some may find activities associated with normal agricultural activities objectionable and dangerous. (Effects on Agriculture)

Limitation of Access onto a Public Road. A "no-ingress/egress" restriction exists along the Birch Creek Loop Road frontage of this subdivision, excepting the existing

agricultural approaches to Tract 22-A1. The accesses off Birch Creek Loop shall only be used for agricultural purposes. All lots within this subdivision must have primary access off Haywire Lane. This limitation of access may be lifted or amended only with the approval of the Board of County Commissioners. (Effects on Public Health and Safety)

Notification of Road Maintenance Agreement. Haywire Lane is not maintained by Ravalli County, the State of Montana, or any other governmental entity. Neither the County nor the State assumes any liability for lacking or improper maintenance. A Road Maintenance Agreement for this road was filed with this subdivision and outlines which parties are responsible for maintenance and under what conditions. (Effects on Local Services)

Notification of Irrigation Facilities and Easements. Within this subdivision there are irrigation easements, as shown on the final plat. All downstream water-right holders have the right to maintain and repair their irrigation facilities whenever necessary to keep them in good condition. The filed subdivision plat shows the irrigation easements on the property. The Bitter Root Irrigation District must approve any relocation or alteration (e.g. installation of a culvert) of irrigation ditches/pipelines. Any act that damages or destroys a ditch, interferes with its operation or maintenance in any way, or restricts access to the ditch so as to interfere with its maintenance is expressly prohibited. The downstream water right holders and those acting with the approval of the Bitter Root Irrigation District have the right to use the easements to maintain the ditches. Please contact the Bitter Root Irrigation District, 1182 Lazy J Lane, Corvallis, Montana, 59828, 961-1182 for more information. (Effects on Agricultural Water User Facilities)

Notification of "Very Limited" Soils. Within this subdivision there are areas of the property identified by the Natural Resources Conservation Service (NRCS) as potentially having soils rated as "very limited" for road construction and building sites. The approximate locations of these areas can be found on a reduced copy of the final plat. Descriptions of the severe soils in question are included as exhibits to this document. (Effects on Public Health & Safety)

2. Protective covenants for this subdivision shall be submitted with the final plat that include the following provisions:

Waiver of Protest to Creation of RSID/SID. Owners and their successors-in-interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to, a community water system, a community wastewater treatment system, and improving and/or maintaining the roads that access the subdivision, including related right-of-way, drainage structures, and traffic control signs. (Effects on Local Services)

Living with Wildlife. (See Exhibit A-1 for required provisions.) (Effects on Agriculture and Wildlife & Wildlife Habitat)

No-Build/Alteration Zone. There is a no-build/alteration zone located on Tract 22-A1, as shown on the plat, to restrict building or alteration in the area around Birch Creek. No new building or structure may be constructed or otherwise placed and no road or utility crossing is permitted and the vegetation shall be retained in its natural condition, with the exception of necessary weed control, development of native vegetation, or the installation of irrigation infrastructure to mitigate the impacts of livestock grazing near Birch Creek. No fill is permitted to be placed within the no-build/alteration zone. Fences are allowed. (Effects on Agricultural Water User Facilities and Natural Environment) (See Exhibit A-1 for detailed guidance on protecting the riparian buffer from FWP.) (Effects on Natural Environment)

Lighting for New Construction. To promote public health and safety, reduce energy consumption, and reduce impacts to nocturnal wildlife, full cut-off lighting is recommended for any new construction within this subdivision. A full cut-off fixture means a fixture, as installed, that is designed or shielded in such a manner that all light rays emitted by the fixture, either directly from the lamps or indirectly from the fixture, are projected below a horizontal plane through the lowest point on the fixture where light is emitted. The source of light should be fully shielded on the top and sides, so as not to emit light upwards or sideways, but only allowing light to shine down towards the subject that is to be lighted. For more information, visit www.darksky.org. (Effects on Natural Environment, Wildlife & Wildlife Habitat, and Public Health & Safety)

Radon Exposure. The owner understands and accepts the potential health risk from radon concentrations, which are presently undetermined at this location. Unacceptable levels of radon can be reduced through building design and abatement techniques incorporated into structures. Property owners are encouraged to have their homes tested for radon. Contact the Ravalli County Environmental Health Department for further information. (Effects on Public Health & Safety)

Control of Noxious Weeds. A weed control plan has been filed in conjunction with this subdivision. Lot owners shall control the growth of noxious weeds on their respective lot(s). Contact the Ravalli County Weed District for further information. (Effects on Agriculture and Natural Environment)

Required Posting of County-Issued Addresses for Lots within this Subdivision. The Corvallis Rural Fire District has adopted the Uniform Fire Code which requires lot owners to post County-issued addresses at the intersection of the driveway leading to each residence and the road providing access to the lot as soon as construction on the residence begins. (Effects on Local Services and Public Health & Safety)

Access Requirements for Lots within this Subdivision. The Corvallis Rural Fire District has adopted the Uniform Fire Code. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface

width of 20', a vertical clearance of 13'6" and an all-weather surface that can accommodate the weight of a fire truck. Please contact the Corvallis Rural Fire District for further information. (Effects on Local Services and Public Health & Safety)

Amendment. Written governing body approval shall be required for amendments to provisions of the covenants that were required to be included as a condition of subdivision approval. (Effects on all six criteria)

3. The subdividers shall include an RSID/SID waiver in a notarized document filed with subdivision plat that states the following: Owners and their successors-in-interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to a community water system, a community wastewater treatment system, and improving and/or maintaining the roads that access the subdivision including related right-of-way, drainage structures, and traffic control signs. (Effects on Local Services)
4. The subdivider shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision. (Effects on Local Services and Public Health & Safety)
5. Prior to final plat approval, the subdividers shall provide a letter from the Corvallis Rural Fire District stating that the subdividers have provided the required 1,000 gallon-per-minute water supply or 2,500 gallon-per-lot water storage for fire protection for each lot within this subdivision. Alternatively, the subdividers may provide evidence that a \$500-per-lot contribution has been made to the Corvallis Rural Fire District with the final plat submittal in lieu of the required water supply or water storage for fire protection. (Effects on Local Services and Public Health & Safety)
6. The subdivider shall submit a letter or receipt from the Corvallis School District stating that they have received a voluntary contribution prior to final plat approval. (Effects on Local Services)
7. The final plat shall show a no-ingress/egress zone along the Birch Creek Loop frontage of the subdivision, excepting the approaches for the existing agricultural accesses. (Effects on Public Health and Safety)
8. All existing and proposed irrigation easements shall be shown on the final plat as they were shown on the preliminary plat. (Effects on Agricultural Water User Facilities)
9. The Road Maintenance Agreement for Haywire Lane shall state that other parcels that may have beneficial use of this road shall be allowed to join as members of the agreement without the consent of the current members. (Effects on Local Services)

10. A no-build/alteration zone extending 50 feet from each side of the ordinary high water mark of Birch Creek shall be shown on the final plat. (Effects on the Natural Environment)
11. The subdivider shall sign an affidavit acknowledging that there is a 60-foot public road easement on Birch Creek Loop and that prior to any sale or transfer of Tract 22-A1, the pole barn shall be removed from the public easement. (Effects on Local Services)
12. The subdivider shall provide evidence with the final plat submittal that dust abatement has been applied to Haywire Lane from its intersection with Birch Creek Loop to the end of Tract 22-A2. (Effects on Natural Environment and Variance)

SUBDIVISION REPORT

COMPLIANCE WITH PRIMARY SUBDIVISION REVIEW CRITERIA

CRITERION 1: EFFECTS ON AGRICULTURE

Findings of Fact:

1. According to the Montana Cadastral Database published by the Montana State Library and based on the Department of Revenue's Computer Assisted Mass Appraisal (CAMA) database, the property is located in an area of residential and agricultural land uses. To mitigate impacts on agriculture, a notification of proximity to agricultural operations shall be included in the notifications document filed with the final plat. The protective covenants, also filed with the final plat, shall include a provision requiring homeowners to keep pets confined to the house, a fenced yard, or in an outdoor kennel. (Conditions 1 and 2)
2. The Web Soil Survey published by the United States Department of Agriculture Natural Resources Conservation Service identifies soil types listed as Farmland of Statewide Importance and Farmland of Local Importance. Approximately 75% of the property may have Farmland of Importance.
3. Based on the noxious weed evaluation form submitted with the preliminary plat application, the property has Canada Thistle and Spotted Knapweed. Section 3-4-4(a)(xi) requires the applicant to submit a Ground Disturbance and Noxious Weed Management Plan approved the Ravalli County Weed District. To further mitigate impacts on surrounding agriculture, a provision in the covenants shall require future lot owners to control weeds in conjunction with the filed plan. (Condition 2)
4. There is currently one residence, one garage, two barns, sheds, and corrals on the property. The subdivider has been using the property for his residence and horse pasture. He is proposing to continue to use Tract 22-A1 in the same manner.

Conclusions of Law:

1. With the mitigating conditions of approval and requirements of final plat approval, impacts of the subdivision on surrounding agriculture will be reduced.

2. This property appears to have productive agricultural soils, but has not recently been farmed and the current owner is not proposing to use the land for agriculture. The proposal is to split approximately 2.40 acres off the original 15.66-acre property. The proposal does not discourage a future lot owner from using the 13.22-acre parcel, Tract 22-A1, for agriculture in the future.

CRITERION 2: EFFECTS ON AGRICULTURAL WATER USER FACILITIES

Findings of Fact

1. The application states that 10 irrigated-acres of water are provided to the property by the Bitter Root Irrigation District (BRID). An underground gravity-fed sprinkler line provides water to the property. BRID has approved the reallocation of water in an agreement dated November 6, 2006, so that Tract 22-A1 is allotted nine irrigated-acres and Tract 22-A2 is allotted one irrigated-acre. (Application)
2. The subdivider has surface water rights from Birch Creek in addition to the water rights discussed above. According to the DNRC general abstract on these water rights, this water is used for stock, flood irrigation, and sprinkler irrigation. The subdivider is proposing to keep these water rights with Tract 22-A1. (Application) (Exhibit A-2)
3. Based on a 2004 aerial photograph and comments from FWP, a portion of Birch Creek on the property appears to have been disturbed by livestock grazing. Based on a conversation with the subdivider's representative, the subdivider would like to install irrigation infrastructure in the future to mitigate impacts from livestock on Birch Creek. The subdivider is proposing a 50-foot no-build/alteration zone on either side of Birch Creek and has requested that this zone allow for the installation of irrigation infrastructure. To mitigate impacts on agricultural water user facilities and the natural environment, the no-build/alteration zone on Birch Creek shall allow for the installation of irrigation facilities. (Condition 1)
4. The subdivider is proposing a 10-foot wide irrigation easement along the underground gravity-fed sprinkler line traversing the southern boundary of Tract 22-A1. This line will provide water rights from BRID to both lots in the proposed subdivision. To mitigate impacts on agricultural water user facilities, the irrigation easement shall be shown on the final plat as shown on the preliminary plat. (Condition 8)
5. Section 3-4-4(a)(xx) requires that notarized documentation showing how the water rights are to be divided are submitted with the final plat application. Section 3-4-4(a)(xxi) requires a notarized statement from BRID approving of the irrigation alterations with the final plat application. Section 3-4-4(a)(xxvi) requires evidence that alterations or installation of irrigation infrastructure has been completed is submitted with the final plat application.
6. To notify future property owners of the irrigation rights associated with this property and the role of the Irrigation District and to mitigate potential impacts on agricultural water user facilities, a notification of the irrigation facilities and easements shall be filed with the final plat. (Condition 1)

Conclusion of Law:

With the mitigating conditions of approval and requirements of final plat approval, impacts on agricultural water user facilities will be reduced.

CRITERION 3: EFFECTS ON LOCAL SERVICES

Findings of Fact:

1. Bailey Lane and Birch Creek Loop, County-maintained roads providing access to the subdivision, do not meet County standards. Per Section 5-4-5(d), the subdivider is required to pay the pro rata share of the cost to improve the portions of these roads providing access to the subdivision to meet County standards.
2. Haywire Lane, a privately-maintained road providing access to the two lots within the subdivision and sixteen additional lots outside of the proposed subdivision, does not meet County standards. Per Section 5-4-5(a), the subdivider is required to improve the section of Haywire Lane leading to the subdivision. The subdivider has requested a variance from improving Haywire Lane to meet County standards and Staff is recommending conditional approval of the variance request. (See Variance Request)
3. There is one existing residential home on Tract 22-A1 and one single-family residential home is proposed on Tract 22-A2. It is estimated that this subdivision will generate an additional 8 trips per day for the new single-family dwelling.
4. There does not appear to be an existing road maintenance agreement for Haywire Lane. A preliminary road maintenance agreement for Haywire Lane was included in the application packet that would only apply to the two lots in this subdivision. Per Section 3-4-4(a)(xix), the final plat application packet is required to include a road maintenance agreement that meets the requirements of the Ravalli County Subdivision Regulations (See Section 3-1-5(a)(xxxviii) for the required provisions). To mitigate impacts on local services, the road maintenance agreement shall also state that other parcels that may have beneficial use of Haywire Lane may join as members of the road maintenance agreement without the consent of the current members. A notification of the road maintenance agreement shall be included in the notifications document filed with the final plat. (Conditions 1 and 9)
5. Birch Creek Loop is a public road and utility easement maintained by the County. A 60-foot easement for Birch Creek Loop is shown on COS 2012, which was filed in 1979. According to the applicant, a formal 60-foot easement for Birch Creek Loop was created through AP 1007, which was filed by the subdivider in 1999. A pole barn owned by the subdivider is located approximately two-thirds within the road easement for Birch Creek Loop, along the northwestern portion of Tract 22-A1. According to the subdivider's consultant, the pole barn existed prior to the subdivider's purchase of the land in 1968. (Exhibit A-3)
6. The County Attorney's Office reviewed the easement issue and recommended that the applicant be allowed to keep the barn until the time that the property is sold. The barn should be removed from the public road easement prior to sale. To mitigate impacts of this subdivision on local services, specifically the public road system, the subdivider shall sign an affidavit indicating he is aware of the existing 60-foot wide public road easement on Birch Creek Loop and that prior to a sale or transfer of Tract 22-A1, the barn shall be removed from the public easement. (Condition 11)

7. To mitigate potential impacts of this subdivision on any possible future public water, sewer system, or improvements to the road system, the RSID/SID waiver filed with the final plat shall address these services/facilities. (Conditions 2 and 3)
8. Bitterroot Disposal provides service to this site.
9. The Ravalli County Sheriff's Office provides law enforcement services to this area and has not specifically commented on the impacts of this subdivision.
10. Individual wells and wastewater treatment systems are proposed to serve the lots. (See Effects on Natural Environment)
11. The subdivision is located within the Corvallis Rural Fire District. The Corvallis Rural Fire District has provided comments on previous subdivision proposals indicating they have adopted a policy which addresses access, posting of addresses, and water supply requirements. To mitigate impacts on local services, the subdivider shall meet the water supply requirements for the Corvallis Rural Fire District, which is a 1,000 gallon per minute water supply or a 2,500 gallon per lot water storage. Alternatively, the subdivider can contribute \$500 per lot and provide a letter from the Corvallis Rural Fire District that the contribution has been made prior to final plat approval. Conditions of approval will meet the recommendations of the Corvallis Rural Fire District. (Exhibit A-4) (Conditions 2, 4, and 5)
12. To mitigate impacts on local services, the subdivider shall apply for County-issued addresses. A provision requiring property owners to post County-issued addresses at their driveways shall be in the covenants. (Conditions 2 and 4)
13. This subdivision is exempt from a park dedication/donation because it is a minor subdivision in which only one additional parcel is created. (See Section 6-1-5(b)(1))
14. With this subdivision, it is estimated that approximately .5 school-aged children will be added to the Corvallis School District, assuming an average of .5 children per single-family residence (Source: Census 2000).
15. The Corvallis School District was notified of the subdivision proposal. In a letter dated February 2, 2007, the School District stated that it has no specific objection to the subdivision, but noted that an increase in students continues to affect their infrastructure. The subdivider is proposing to contribute a voluntary donation of \$250-per-lot to the school district. A condition that the subdivider provides evidence of a contribution to the School District is required prior to final plat approval. (Condition 6) (Exhibit A-5)

Conclusion of Law:

With the mitigating conditions of approval and requirements of final plat approval, impacts of the subdivision on local services will be reduced.

CRITERION 4: EFFECTS ON NATURAL ENVIRONMENT

Findings of Fact:

1. The subdivision is accessed off of Haywire Lane and Birch Creek Loop, which are both gravel roads. Letters from the Ravalli County Board of Health address concerns associated with the impacts of road dust on public health and air quality (Exhibits A-6 and A-7). Per Section 5-4-5(d), the applicant is required to pay the pro rata share of the cost to improve Birch Creek Loop prior to final plat approval. To mitigate impacts on air quality, the applicant shall apply dust abatement to the portion of Haywire

- Lane leading to the subdivision prior to final plat approval. (Condition 12)
2. According to the application, Tract 22-A1 is exempt from sanitation review by DEQ since it has an existing wastewater treatment system constructed prior to April 29, 1993. As a requirement of final plat approval, the subdivider shall provide evidence that this exemption was granted. In the event that an exemption is not granted, the subdivider shall provide a Certificate of Subdivision Plat Approval from DEQ. (Application)
 3. An individual well and wastewater treatment system is proposed to serve Tract 22-A2. A Certificate of Subdivision Plat Approval from Montana Department of Environmental Quality (DEQ) is required to be submitted with the final plat.
 4. The Ravalli County Environmental Health Department provided documentation indicating that they have received adequate information for local subdivision review to occur. (Exhibit A-8)
 5. Birch Creek traverses the northern portion of Tract 22-A1 of this subdivision. The subdivider was not required to submit a floodplain analysis since the creek drains an area smaller than 15 square miles. Montana Fish, Wildlife, & Parks noted the damage that has been caused to the Creek by livestock grazing and recommended that the subdivider provide a 25 or 50-foot no-build/alteration zone from the ordinary high water mark of Birch Creek. FWP has also recommended specific restrictions and guidance for the no-build/alteration zone. In light of this recommendation, the subdivider has proposed a 50-foot no-build/alteration zone from the high water mark of both sides of Birch Creek. (Application)
 6. To mitigate impacts on the natural environment, a no-build/alteration zone 50 feet from the ordinary high water mark of both sides of Birch Creek shall be shown on the final plat and the Riparian Buffer Zone covenants shall be included in the covenants filed with the final plat. (Exhibit A-1) (Conditions 2 and 10)
 7. To mitigate the impacts of light pollution stemming from new construction, the protective covenants shall include a provision recommending full cut-off lighting on new construction. (Condition 2)
 8. The applicant has submitted a noxious weed evaluation form to the Ravalli County Weed District. An approved noxious weed and vegetation control plan is required to be filed with the final plat. According to MCA 7-22-2152, any person proposing a development that needs state or local approval and that results in the potential for noxious weed infestation within a weed district shall notify the weed board at least 15 days prior to activity. Consequently, 15 days prior to activities requiring a revegetation plan, such as road construction, the plan shall be submitted to the weed board for approval by the board. To mitigate impacts on the natural environment, a noxious weed control provision shall be included in the protective covenants filed with the final plat for this subdivision. (Condition 2)
 9. The Montana Natural Heritage Program has identified two mosses, *Bryum dichotomum* and *Pseudocrossidium obtusulum*, that are sensitive species and are located in the same section as the subdivision. Due to lack of suitable habitat for these mosses within the subdivision, a sensitive species waiver was requested and granted by the Planning Director. (Application)

Conclusion of Law:

Impacts from this subdivision on the natural environment will be reduced with the mitigating conditions and requirements of final plat approval.

CRITERION 5: EFFECTS ON WILDLIFE & WILDLIFE HABITAT

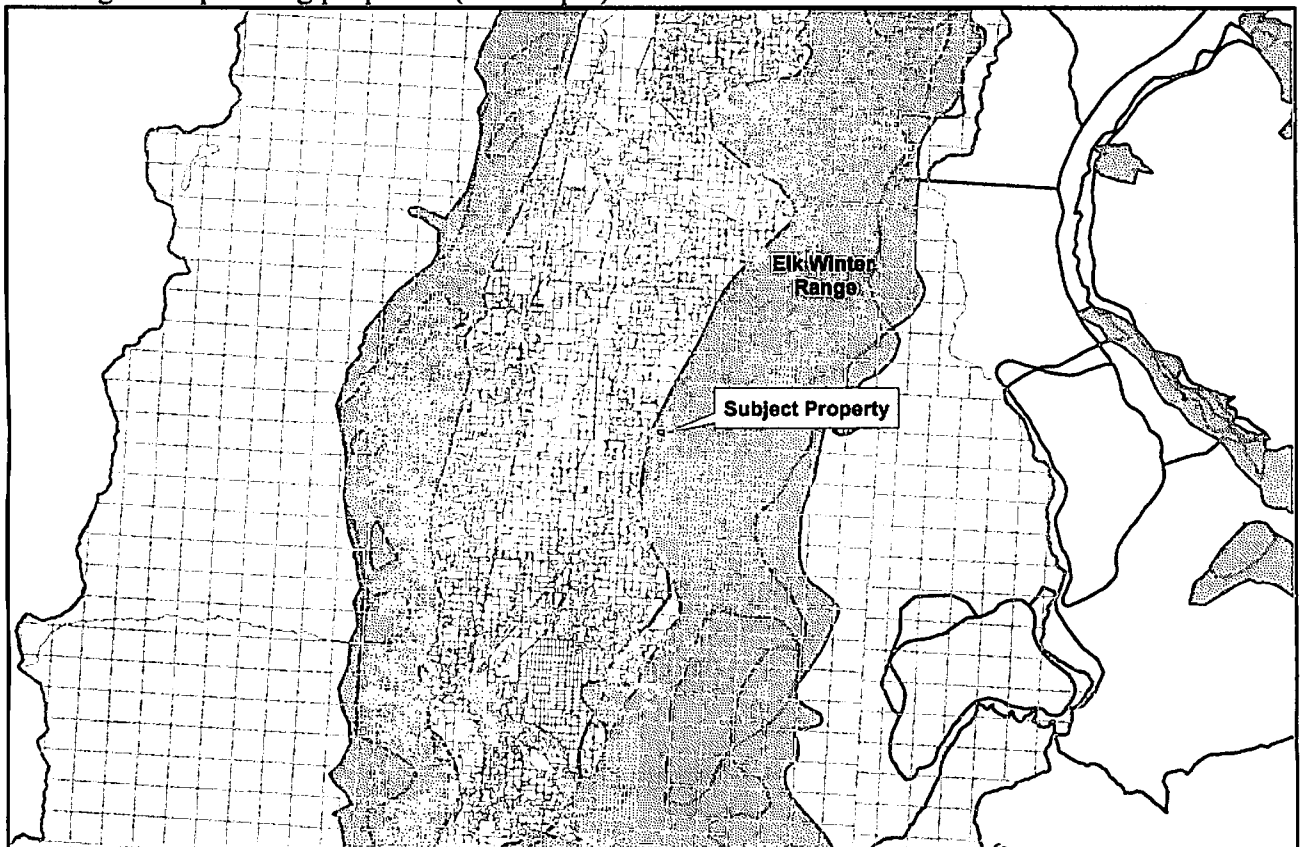
Findings of Fact:

A letter from Montana Fish, Wildlife, and Parks (FWP) recommends that the Living with Wildlife provisions be included with the covenants for this subdivision. (Exhibit A-1) (Condition 2)

To mitigate the impacts of light pollution stemming from new construction, the protective covenants shall include a provision recommending full cut-off lighting on new construction. (Condition 2)

According to Montana Fish, Wildlife and Parks data, the property is located within Elk Winter Range.

Map 2 shows Elk Winter Range boundaries in relation to the subdivision. The data was created by FWP and the Rocky Mountain Elk Foundation at a scale of 1:250,000 and cannot be used at a larger scale. At this scale, it appears that all of the subdivision is within Elk Winter Range. However, the boundary is coarse and should only be used for general planning purposes. (See Map 2)



Map 2: Elk Winter Range Boundaries

(Source Data: Montana Fish, Wildlife, and Parks and Rocky Mountain Elk Foundation)

According to the Montana Natural Heritage Program, the Bobolink and Townsend's Big-Eared Bat are located in the same section as the proposal. Due to lack of suitable habitat for these species, the subdivider requested and received a waiver from the requirement to submit a sensitive species report. (Application)

Conclusion of Law:

With the mitigating conditions of approval and requirements of final plat approval, impacts on Wildlife & Wildlife Habitat will be reduced.

CRITERION 6: EFFECTS ON PUBLIC HEALTH & SAFETY

Findings of Fact:

1. The applicant is proposing to use the existing loop driveway off Haywire Lane for Tract 22-A1 and a new access off Haywire Lane for Tract 22-A1. There are three existing accesses off Birch Creek Loop that the applicant has used to access his horse barns, sheds, and corrals. To mitigate impacts on the local road system, the final plat shall show a no-ingress/egress zone along the Birch Creek Loop frontage of the subdivision, excepting the existing agricultural accesses. These accesses shall only be used for agricultural purposes. A notification of this limitation of access shall be included in the notifications document. (Conditions 1 and 7)
2. The Sheriff's Office, Fire District, and Marcus Daly Hospital EMS Department were all contacted for comments on the impacts of this subdivision on public health and safety. No comments were received.
3. According to the application, Tract 22-A1 is exempt from sanitation review by DEQ since it has an existing wastewater treatment system constructed prior to April 29, 1993. As a requirement of final plat approval, the subdivider shall provide evidence that this exemption was granted. In the event that an exemption is not granted, the subdivider shall provide a Certificate of Subdivision Plat Approval from DEQ. (Application)
4. An individual well and wastewater treatment system is proposed to serve Tract 22-A2. A Certificate of Subdivision Plat Approval from Montana Department of Environmental Quality (DEQ) is required to be submitted with the final plat.
5. Per Section 3-5-1(a)(xl), a floodplain analysis for Birch Creek was not required.
6. The preliminary plat and soils map indicate that the subdivision may have soils rated as very limited for road and building construction. Soil type 24B, as identified by the NRCS, is rated "very limited" for dwelling structures due to flooding and is most likely associated with the potential flooding of Birch Creek. To educate property owners and to mitigate potential impacts of this subdivision on public health & safety, a notification of the potential for very limited soils shall be included in the notifications document filed with the final plat. A reduced plat showing the approximate locations of soils rated as very limited for roads and building construction and descriptions of the very limited soils in question shall be attached to the notifications document as an exhibit. (Condition 1)
7. To mitigate impacts on Public Health & Safety, the subdivider shall apply for County-issued addresses and a provision requiring property owners to post County-issued addresses at their driveways shall be in the covenants. (Conditions 2 and 4)

8. The proposed subdivision is located within the Corvallis Rural Fire District. Conditions 2 and 5 address impacts to the District.
9. To mitigate the impacts of light pollution stemming from new construction, the protective covenants shall include a provision recommending full cut-off lighting on new construction. (Condition 2)
10. There is a prevalence of radon in the County and to mitigate impacts on Public Health & Safety, the covenants shall include a statement regarding radon exposure. (Condition 2)

Conclusion of Law:

The mitigating conditions and requirements of final plat approval will address impacts on Public Health & Safety.

COMPLIANCE WITH:

- 1) THE SURVEY REQUIREMENTS PROVIDED FOR IN PART 4 OF M.C.A. 76-3.

Finding of Fact:

The Seal of a Professional Land Surveyor or Engineer is required on all final plats, which states that the subdivision complies with part 4 of M.C.A. 76-3.

Conclusion of Law:

This proposal meets the survey requirements, or conditions have been required to bring the proposal into compliance.

- 2) THE LOCAL SUBDIVISION REGULATIONS PROVIDED FOR IN PART 5 OF M.C.A. 76-3.

Finding of Fact:

Subdivisions are required to comply with the local subdivision regulations provided for in part 5 of M.C.A. 76-3.

Conclusion of Law:

The subdivider has submitted a plan that complies with the requirements of local subdivision regulations, or conditions have been required that will bring the plan into compliance.

- 3) THE LOCAL SUBDIVISION REVIEW PROCEDURE PROVIDED FOR IN THE RAVALLI COUNTY SUBDIVISION REGULATIONS

Findings of Fact:

1. Subdivisions are required to comply with the local subdivision review procedure provided for in the Ravalli County Subdivision Regulations.
2. A decision of the governing body rejecting or approving a proposed subdivision may be appealed to the district court within thirty (30) days of such decision. The petition shall specify the grounds upon which the appeal is made. An appeal may be made by the subdivider; a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the unincorporated area of the county that can show a likelihood of material injury to the landowner's property or its value; a first class municipality if the subdivision is within three miles of its

limits, a second class municipality if a subdivision is within two miles of its limits, or a third class municipality or town if the subdivision is within one mile of its limits. An aggrieved party means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.

Conclusion of Law:

This development plan proposal has followed the necessary application procedure and has been reviewed within the procedures provided in Chapter 3 of the Ravalli County Subdivision Regulations.

CONSISTENCY WITH EXISTING ZONING AND COVENANTS

Findings of Fact:

1. There are existing restrictive covenants on the property. They limit the original parcel (Tract 22A) to be split only once.
2. This property is not located within a voluntary zoning district.
3. Minimum lot size is 2.43 acres. The proposal complies with the interim County-wide zoning regulations.

Conclusion of Law:

The property appears to comply with existing covenants and zoning.

PROVISION OF EASEMENTS FOR UTILITIES

Findings of Fact:

1. The preliminary plat indicates that existing utility easements are located along Birch Creek Loop and Haywire Lane.
2. According to the application, the proposed subdivision will be served by Ravalli Electric Co-operative and Qwest Communications. Utility companies have been notified of the proposed subdivision. No comments have been received to date.
3. Utility certificates are a requirement of final plat approval.
4. Utility easements are required to be shown on the final plat.

Conclusion of Law:

Utility services are available to the subdivision.

PROVISION OF LEGAL AND PHYSICAL ACCESS

Findings of Fact:

1. Physical and legal access for this subdivision is proposed via Bailey Lane, Birch Creek Loop, and Haywire Lane. The lots will access off Haywire Lane with individual driveways. (Local Services)
2. Both Bailey Lane and Birch Creek Loop are listed in Exhibit A of the Ravalli County Subdivision Regulations.
3. An easement agreement filed in 1998 shows that the subject property has access off Haywire Lane.(Application)

Conclusion of Law:

With the conditions of approval and requirements of final plat approval, the proposal meets physical and legal access requirements.

VARIANCE REPORT

VARIANCE REQUEST

According to Section 5-4-5(a) of the Ravalli County Subdivision Regulations, all roads providing primary access to the subdivision shall meet or exceed road standards listed in the regulations. Haywire Lane is a private road providing primary access to this subdivision. The subdivider has requested a variance from Section 5-4-5(a) of the Ravalli County Subdivision Regulations to allow the subdivider relief from upgrading Haywire Lane to County standards. No improvements are proposed.

Compliance with Review Criteria

A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.

Findings of Fact:

1. Haywire Lane is an existing private road that averages 18-feet wide and has a gravel surface. (Application)
2. Birch Creek Loop, an adjacent County-maintained road, is within a 60-foot public road and utility easement and has a gravel surface.
3. This subdivision has the potential to add eight trips per day to Haywire Lane.
4. In an email dated March 15, 2007, David Ohnstad states that because Haywire Lane leads to Birch Creek Loop, a County-maintained gravel road, and the proposal will add an insignificant amount of traffic, the Road Department does not object to the granting of the variance. (Exhibit A-9)
5. Letters from the Ravalli County Board of Health address concerns associated with the impacts of road dust on public health (Exhibits A-6 and A-7). To mitigate impacts to air quality, the applicant shall apply dust abatement to the portion of Haywire Lane leading to the subdivision prior to final plat approval. (Condition 12)

Conclusions of Law:

1. The impacts of eight additional trips to Haywire Lane will not be substantially detrimental to public health and safety.
2. Dust abatement on Haywire Lane will reduce dust generated from the additional trips.

B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.

Finding of Fact

The applicant is required to hard surface a private road leading to a gravel County-maintained road.

Conclusion of Law:

The conditions upon which the variance is proposed appear to be somewhat unique to the property.

C. Physical conditions, such as topography or parcel shape, prevent the subdivider from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).

Finding of Fact:

Physical conditions of the property do not affect the ability of the subdivider to upgrade Haywire Lane to County standards.

Conclusion of Law:

The condition upon which the variance is proposed is not affected by physical conditions.

D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.

Findings of Fact:

1. This property is not located within a voluntary zoning district.
2. This proposal complies with the interim zoning regulations requiring one dwelling structure per two acres.
3. Relevant countywide provisions in the Ravalli County Growth Policy are outlined below. Provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of the variance request against these provisions.

Countywide Goal 3: Protect air quality.

Countywide Policy 3.2: Continue to minimize dust and other air pollution by appropriate subdivision regulation.

- To mitigate impacts on air quality, the applicant shall apply dust abatement to the portion of Haywire Lane leading to the subdivision prior to final plat approval. (Condition 12)

Conclusions of Law:

1. Provisions in the zoning standards do not apply.
2. With the mitigating condition of approval, the request does not appear to vary from the provisions in the Growth Policy.

E. The variance will not cause a substantial increase in public costs.

Findings of Fact:

1. The road will be privately-maintained by individual lot owners until such time as the County elects to assume maintenance responsibilities.
2. The proposal will add eight additional trips to Haywire Lane.

Conclusion of Law:

The granting of the variance will not cause a substantial increase in public costs.

Commissioner Rokosch asked if this was a two or three lot minor subdivision. Jennifer replied it is a two lot.

Commissioner Rokosch opened the floor for public comment.

George Marshall stated the existing pole barn within the easement is on an amended plat that was done by Mr. Carter. As far as the school district donation, it will be \$250 per lot on new lots only.

Jim Dundus asked if the dust abatement requested would be for the full length of the road or just the length of the subdivision. Jennifer replied just the length of the subdivision. Commissioner Rokosch asked if this was to be one-time dust abatement. Jennifer replied yes. Renee added in the past, the Board has required additional abatement. Commissioner Chilcott expressed his concern with one time abatement as it would not address the dust particles. Commissioner Rokosch concurred that one-time dust abatement would not be sufficient to address the problem. Renee will look into the issue of future dust abatement applications. Alex indicated the county's ability to require bonding is limited. Commissioner Driscoll suggested they hold funding in a trust account which could be utilized for additional dust abatement. George stated the road maintenance agreement includes dust control.

Commissioner Rokosch read a letter received July 9th from Russ Axtell. This letter stated the developer needs to do some kind of maintenance on Haywire Lane and that he lets his pigs run on Birch Creek Loop and Haywire Lane. The developer has also previously done two land subdivisions in the area and the impacts need to be mitigated with improvements.

George stated he would like to dispute the comments made by Russ Axtell. Mr. Carter (the developer) has done two boundary line adjustments, no subdivisions. He also noted Haywire Lane has a 60 foot easement.

Commissioner Rokosch called for any further public comment, hearing none, public comment was closed. Board deliberations then took place.

Commissioner Rokosch asked Mr. Carter what he intends to do regarding dust abatement. Delbert replied he would do what the county requires and he will use the same components (chemicals) as the road department. Commissioner Chilcott noted there are three neighbors to the east and they should participate in the dust abatement as well.

Commissioner Rokosch stated they are adding new lots and suggested they require two applications of abatement. Commissioner Chilcott asked if Commissioner Rokosch is suggesting an amendment to the road maintenance agreement. Commissioner Rokosch replied he is not sure if it would require an amendment. Renee asked if this could be in a

covenant. Alex replied it is not a situation where a covenant should be used. Commissioner Rokosch requested it be added to condition #12. Renee added she is not sure that would be the best suggestion. Commissioner Rokosch suggested adding to the road maintenance agreement, which would include either participating in the county dust abatement program or the equivalent of such. Commissioner Thompson stated it is proper mitigation for expedited subdivision. As far as writing it in the road maintenance agreement, he is not sure. In the past the Commissioners have requested two applications of dust abatement. George replied it would be easier to write that into the road maintenance agreement.

Commissioner Chilcott made a motion to approve the variance request from Section 5-4-5(a) of the Ravalli County Subdivision Regulations based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report, adding a condition that the road maintenance agreement state that the application of dust palliative be done on a biennial basis. He also added a dust abatement finding under Public Health and Safety because having pavement in the middle of a gravel road causes a safety issue. Commissioner Thompson seconded the motion and all voted 'aye'.

Commissioner Rokosch read a RSID waiver under condition # 2. Jennifer added it also applies to condition #3. George stated his basis for suggesting this change of language is the requirement for pro rata on the road. The owner is already doing the road maintenance. He suggested taking out the word "improvement" but leave in the word "maintenance".

Alex stated modification of the RSID waiver portion could be done. Commissioner Thompson stated the RSID doesn't talk about what exists there now, but what could be in the future. Paying the pro rata addresses what exists now. He suggests leaving the language as it is. The Board agreed with leaving the language as is.

Commissioner Rokosch requested they address the school contributions. He stated he does understand this is a voluntary contribution, however with the impact on the school district in mind; he would like to ask the developer if he is willing to contribute to the school district. George replied they would change their contribution from \$250 for the new lot to \$500 for the new lot.

Commissioner Thompson made a motion to approve Mountain View Orchards, Block 8, Track 22-A based on the findings of fact and conclusions of law in the staff report, and subject to the conditions in the staff report with the additional conditions discussed today which includes the dust abatement in the road maintenance agreement to include one application per two years and the school contributions of \$500 for the new lot to be paid prior to final plat approval. Commissioner Driscoll seconded the motion and all voted 'aye'.

In other business, the Board met for a Public Hearing regarding Road Closure for Charlos Heights. Road Supervisor Dave Ohnstad and Engineer Tom Hansen were present.

Glenda Wiles presented the Board with the application for Road Abandonment submitted by Jeffrey Bernard. Commissioner Rokosch stated the Notice of Public Hearing was published on June 26th and July 3rd, 2007 referencing the hearing. Tom read the viewer's report to the Board.

Commissioner Chilcott questioned how wide the original road was. Tom replied it had a 30 feet easement. Commissioner Chilcott stated they want a 60 foot road easement. Tom presented a map to the Board for clarity. Brief discussion followed regarding conditions of approval.

Commissioner Rokosch asked Dave for his views on the abandonment. Dave replied this road has no public benefit. The only benefit would be the 60 foot easement. He recommended Board approval.

Commissioner Rokosch stated there are two outstanding issues for the Board granting approval; one being the notification of Christina Gunvaldson as was noted on the petition response from the Clerk and Recorder, and two being the conditional granting of the road easement. Brief discussion followed regarding the notification of Christine Gunvaldson. It was determined that notification was not required due to a previous abandonment by Jeff Bernard on Charlos Heights.

Commissioner Grandstaff made a motion to abandon the un-named platted road on the eastside of Block 3, located in the SE ¼ of Section 2,, T4N, R21 W, from the Southeast corner of Lot 16-A, Block 3 Charlos Heights Orchards to the Northeast corner of Lot 16-A, Block 3, Charlos Heights Orchards (approximately 152 feet) with the conditions of public road easement to the County for the length of Mr. Bernard's ownership across Lot 16-A ASP 563243 and Lot 0 Block 22 Charlos Heights Town site, with an easement of 30' in width as measured from the centerline of the existing traveled way and the abandoned strip incorporated into Lot 16-A from which it came. Commissioner Chilcott seconded the motion and all voted 'aye'. See Resolution No.2171.